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13 14 15	Advertiser Classes UNITED STATI	(Additional counsel on signature page) ES DISTRICT COURT
6		CISCO DIVISION
18 19 20 21 22 23 24 25 26 27	MAXIMILIAN KLEIN, et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. META PLATFORMS, INC., Defendant.	Case No. 3:20-cv-08570-JD Hon. James Donato ADVERTISER PLAINTIFFS' NOTICE OF MOTION AND MOTION TO EXCLUDE OPINION TESTIMONY OF DR. GEORGIOS ZERVAS Hearing Date: June 20, 2024 Hearing Time: 10:00 a.m. Courtroom 11, 19th Floor
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NOTICE OF MOTION AND MOTION TO EXCLUDE OPINION TESTIMONY OF DR. GEORGIOS ZERVAS

PLEASE TAKE NOTICE that on June 20, 2024, at 10:00 a.m., before the Honorable James Donato, of the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California, Courtroom 11, 19th Floor, Advertiser Plaintiffs Affilious, Inc., Jessyca Frederick, Mark Berney, 406 Property Services, PLLC, Mark Young, and Katherine Looper, on behalf of themselves and all others similarly situated, will and now do move the Court for an order excluding paragraphs 12 and 66-69 of the Advertiser Merits Rebuttal Report of Georgios Zervas, Ph.D. and related testimony.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, all filed supporting declarations and exhibits, the records, pleadings, and other documents on file in this consolidated action, and any argument that may be presented at or before the hearing on this Motion.

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PRELIMINARY STATEMENT

Advertiser Plaintiffs respectfully move to exclude certain testimony from one of Defendant Meta Platforms, Inc.'s ("Facebook") experts, Dr. Georgios Zervas, as failing every subpart of the Rule 702 standard. Dr. Zervas—retained by Facebook as a rebuttal expert on, among other things, the technical details and economic impact of Facebook's "In-App Action Panel" (IAAP) program to wiretap its competitors, including Snapchat—offered opinions regarding Facebook product design that had no basis in Dr. Zervas's expertise or specialized knowledge.

Based on no specialized knowledge or experience and lacking even the most basic indicia of reliability, Dr. Zervas's opinions regarding Facebook product design, which appear at paragraphs 12 and 66-69 of his merits rebuttal report, should be excluded under *Daubert* (along with any related testimony).

BACKGROUND¹

A. The IAAP Program and Advertiser Plaintiffs' Expert Analysis

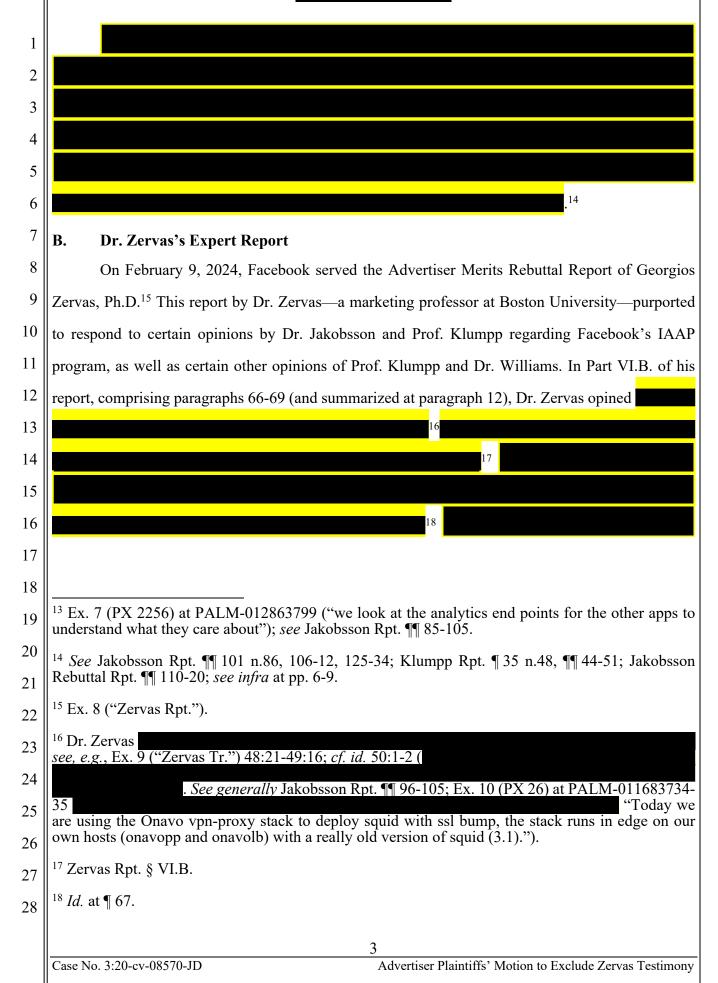
On January 12, 2024, Advertiser Plaintiffs served four merits expert reports in this consolidated antitrust litigation: the Expert Merits Report of Markus Jakobsson, Ph.D.,² the Expert Merits Report of Tilman Klumpp, Ph.D.,³ the Expert Merits Report of Michael A. Williams, Ph.D., and the Expert Merits Report of Kevin Kreitzman. On February 12, 2024, these same experts, including Dr. Jakobsson⁴ and Prof. Klumpp,⁵ served rebuttal merits expert reports. As relevant to this motion, the Jakobsson Report and the Klumpp Report set forth expert opinions regarding Facebook's so-called "In-App Action Panel" (IAAP) program,

- ¹ All exhibits are attached to the Declaration of Brian J. Dunne ("Dunne Dec.").
- $_{25}$ | 2 Ex. 1 ("Jakobsson Rpt.").
- $_{26}$ | 3 Ex. 2 ("Klumpp Rpt.").
- 27 4 Ex. 3 ("Jakobsson Rebuttal Rpt.").
 - ⁵ Ex. 4 ("Klumpp Rebuttal Rpt.").

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1 3 As explained by Dr. Jakobsson—a computer security expert who has authored dozens of peerreviewed articles and books about computer security and who has served as a computer security 4 technologist and researcher at (among other places) Bell Labs, RSA Labs, Xerox PARC, PayPal, 5 Qualcomm, and ByteDance in the twenty-six years since he earned his Ph.D. in computer science, 6 7 specializing in cryptography⁸ 8 9 10 11 "developed 'kits' 12 13 that can be installed on iOS and Android that intercept traffic for specific sub-domains, allowing us to read what would otherwise be encrypted traffic so that we can measure in-app usage (i.e., specific 15 actions that people are performing in the app, rather than just overall app visitation)." This was, a Facebook executive explained to Meta's now-COO Javier Olivan, "a 'man-in-the-middle' 16 approach,"11 17 18 19 ⁶ See Jakobsson Rpt. ¶¶ 30-140, Klumpp Rpt. ¶¶ 30-64; see also Jakobsson Rebuttal Rpt. ¶¶ 35-159, Klumpp Rebuttal Rpt. ¶¶ 85-166. 20 ⁷ See Jakobsson Rpt. Appx. A at 3-20 ("Publication List"); see also Jakobsson Rpt. ¶¶ 23-25. 21 ⁸ See Jakobsson Rpt. ¶¶ 7-21. 22 ⁹ See id. at ¶¶ 46, 63-69; Ex. 5 (PX 2255) at PALM-016564836 (Zuckerberg: "Whenever someone 23 asks a question about Snapchat, the answer is usually that because their traffic is encrypted we have no analytics about them. Given how quickly they're growing, it seems important to figure out a new 24 way to get reliable analytics about them. Perhaps we need to do panels or write custom software. You should figure out how to do this."). 25 ¹⁰ Ex. 6 (PX 414) at 1; see Jakobsson Rpt. ¶¶ 77-84. 26 ¹¹ Ex. 6 (PX 414) at 1. 27 ¹² See Jakobsson Rpt. ¶¶ 41-43. 28



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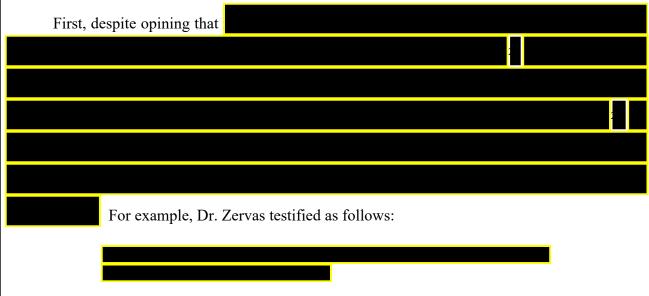
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On March 19, 2024, Dr. Zervas was deposed, and revealed his opinions on product design to be junk science, failing all four prongs of Federal Rule of Evidence 702. This motion, limited to those

portions of Dr. Zervas's proposed testimony that are clearly inadmissible, follows.

ARGUMENT

Rule 702 states that "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application of the principles and methods of the facts of the case." Dr. Zervas's opinions regarding product development fail all four of these prerequisites.

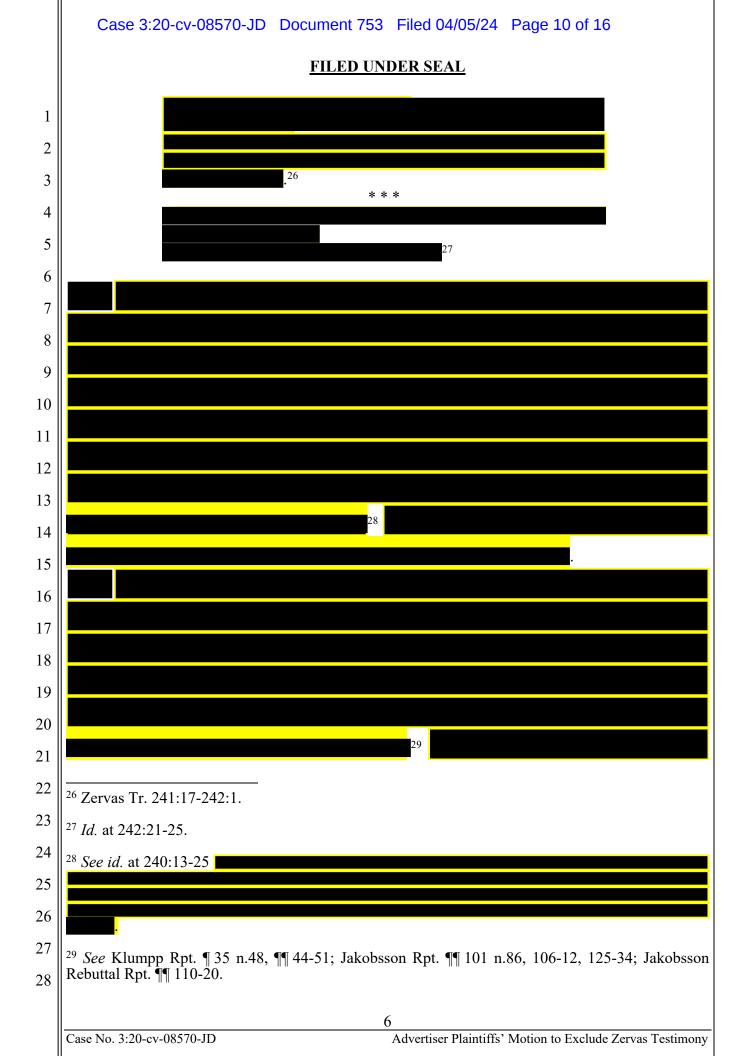


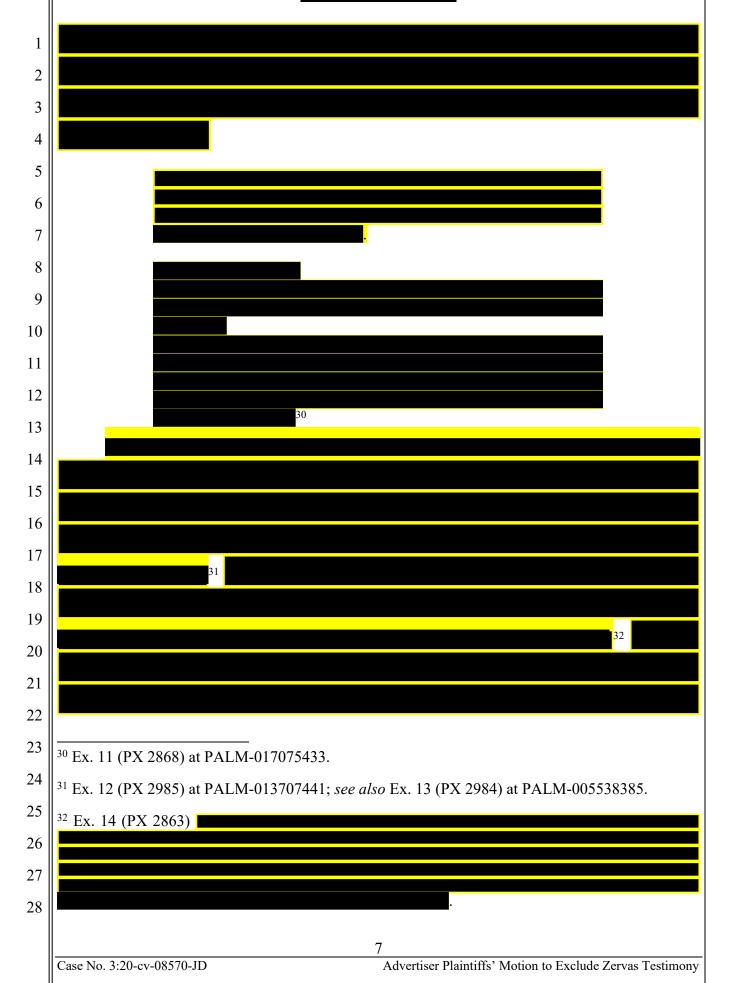
 $^{^{19}}$ Zervas Rpt. \P 68.

 $^{^{20}}$ *Id.* at ¶ 67.

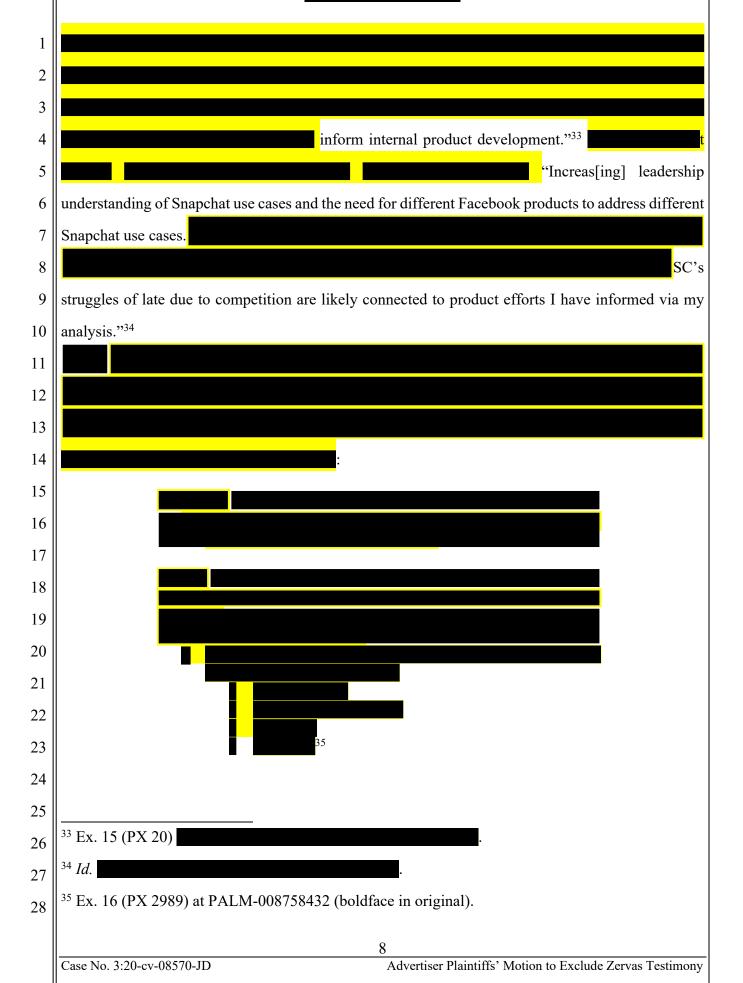
 $^{^{21}}$ *Id.* at ¶ 68.



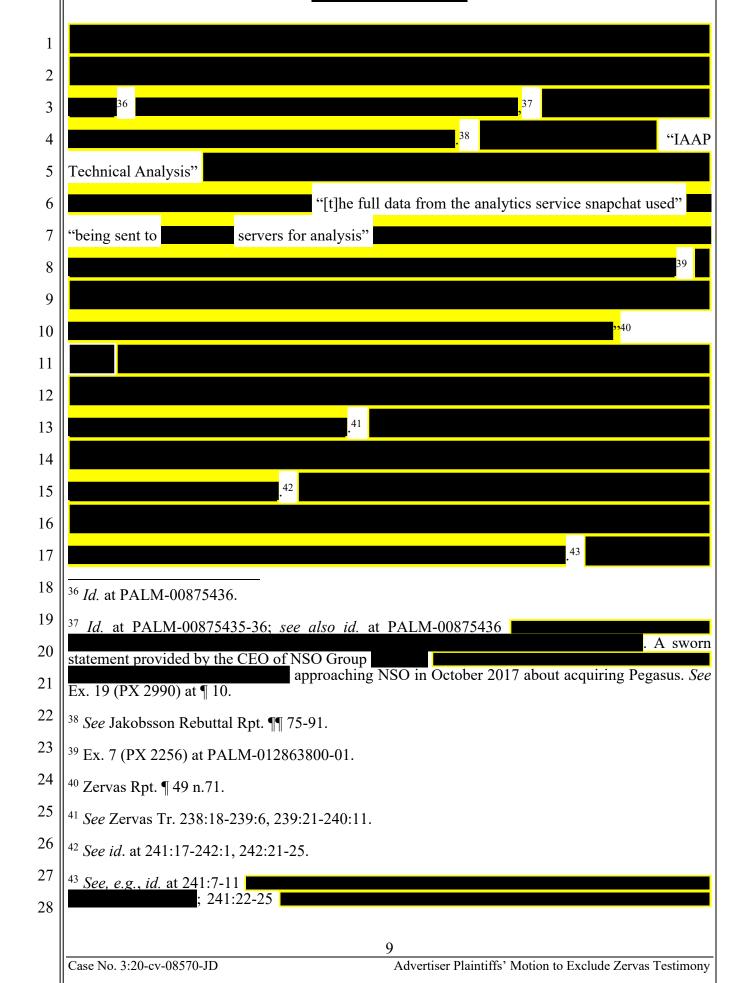




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5	CONCLUSION
6	For the foregoing reasons, Advertiser Plaintiffs respectfully request that paragraphs 12 and
7	66-69 of the Advertiser Merits Rebuttal Report of Georgios Zervas, Ph.D., as well as any related
8	testimony, be excluded.
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77	⁴⁴ See Foshee v. Zuniga, 2021 WL 1947560, at *6 (N.D. Cal. May 14, 2021) ("Mr. Smith's proposed

statements are at best merely his interpretation of the evidence that may be introduced at trial and at worst entirely misleading characterizations of that evidence.").

28

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1	FILER ATTESTATION	
2	I am the ECF user who is filing this document. Pursuant to Civil L.R. 5-1(h)(3), I hereby attestion	
3	that each of the other signatories have concurred in the filing of the document.	
4		
5	Dated: April 5, 2024 By: /s/ Brian J. Dunne	
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